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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 MARK ANTHONY BATES,

12 Petitioner,

13 v.

14 KEN CLARK, Warden

15 Respondent.

Civil No. 07cv0330 H (BLM)

**ORDER DISMISSING CASE
WITHOUT PREJUDICE AND WITH
LEAVE TO AMEND**

16 Petitioner, a state prisoner proceeding pro se, has filed a Petition for Writ of Habeas
17 Corpus pursuant to 28 U.S.C. § 2254.

18 **FAILURE TO MEET THE FILING FEE REQUIREMENT**

19 Petitioner has failed to pay the \$5.00 filing fee and has failed to move to proceed in
20 forma pauperis. Because this Court cannot proceed until Petitioner has either paid the \$5.00
21 filing fee or qualified to proceed in forma pauperis, the Court **DISMISSES** the case without
22 prejudice. See Rule 3(a), 28 U.S.C. foll. § 2254. If Petitioner wishes to proceed with this
23 case, he must submit, **no later than April 27, 2007**, a copy of this Order with the \$5.00 fee
24 or with adequate proof of his inability to pay the fee. **For Petitioner's convenience, a blank**
25 **motion to proceed in forma pauperis is attached to this Order.**

26 **FAILURE TO NAME A PROPER RESPONDENT**


27 Review of the Petition reveals that Petitioner has failed to name a proper respondent. On
28 federal habeas, a state prisoner must name the state officer having custody of him as the

1 respondent. *Ortiz-Sandoval v. Gomez*, 81 F.3d 891, 894 (9th Cir. 1996) (citing Rule 2(a), 28
2 U.S.C. foll. § 2254). “The ‘state officer having custody’ may be ‘either the warden of the
3 institution in which the petitioner is incarcerated . . . or the chief officer in charge of state
4 penal institutions.’” *Id.* (quoting Rule 2(a), 28 U.S.C. foll. § 2254 advisory committee’s
5 note).

6 Here, Petitioner incorrectly named “Ken Clark” as Respondent. In order for this
7 Court to entertain the Petition filed in this action, Petitioner must name the warden *currently*
8 in charge of the state correctional facility in which Petitioner is presently confined or the
9 Director of the California Department of Corrections. *Brittingham v. United States*, 982 F.2d
10 378, 379 (9th Cir. 1992) (per curiam).

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12 **IT IS SO ORDERED.**

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14 DATED: March 6, 2007

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16 MARILYN L. HUFF, District Judge
17 UNITED STATES DISTRICT COURT
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